

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF)
GEORGIA, INC., a Georgia)
Corp.,)

Plaintiff,)

vs.)

CITY OF SANDY SPRINGS,)
GEORGIA, ET AL.,)

Defendants.)

CIVIL ACTION

FILE NO. 1:10-CV0082CAP

- - -

Deposition of NANCY J. LEATHERS, AICP,
taken on behalf of the Plaintiff, pursuant to
agreement of counsel, in accordance with the Federal
Rules of Civil Procedure, before Cathey H. Sutton,
Certified Court Reporter, at 7840 Roswell Road,
Building 500, Sandy Springs, Georgia on the 2nd day
of June, 2010, commencing at the hour of 10:03 a.m.

- - -

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DISCLOSURE

STATE OF GEORGIA

COUNTY OF FULTON

DEPONENT: Nancy J. Leathers, AICP

Date of Deposition: June 2, 2010

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter.

I am not disqualified for a relationship of interest under the provisions of O.C.G.A. 9-11-28(c).

I am a representative of Deb Puckett & Associates.

Deb Puckett & Associates was contacted by Andrea Cantrell Jones, Esq. to provide court reporting services for this proceeding.

Deb Puckett & Associates will not be taking this proceeding under any contract that is prohibited by Georgia law.



Cathey H. Sutton, CCR B1354
Certified Court Reporter
Date: June 2, 2010

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1 APPEARANCES OF COUNSEL:

2 On behalf of the
3 Plaintiff:

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6 On behalf of the
7 Defendants:

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Decatur, Georgia 30030
- - -

10 NANCY J. LEATHERS, AICP,

11 having been duly sworn, was examined and deposed as
12 follows:

13 MS. JONES: This will be the deposition of
14 Ms. Nancy Leathers in the case of Church of
15 Scientology versus City of Sandy Springs.
16 Ms. Leathers, you have the right to read and
17 sign your deposition. Do you wish to reserve
18 that right?

19 THE WITNESS: I do.

20 (Whereupon, the reading and signing of the
21 deposition by the witness was reserved.)

22 MS. JONES: Will Counsel agree to reserve
23 all objections except those to the form of the
24 question and responsiveness of the answer until
25 such time as the deposition is to be used --

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1 MS. HENDERSON: Yes.

2 MS. JONES: -- at trial? This deposition
3 is taken under the Federal Rules of Civil
4 Procedure and shall be used for all purposes
5 allowed thereunder.

6 EXAMINATION

7 BY MS. JONES:

8 Q Ms. Leathers, I assume you have had your
9 deposition taken --

10 A Yes.

11 Q -- at least once before?

12 A I have.

13 Q So I'm not even going to go through the
14 instructions. I'm sure you are a seasoned
15 testifier, given your position. Here comes
16 Mr. Dillard.

17 A Actually, while he's coming in, I was
18 going to bring you my resume, which I left on my
19 desk.

20 MS. JONES: Okay. Good.

21 (A recess was taken from 10:05 a.m. to
22 10:09 a.m., and Mr. Dillard joined the
23 proceedings.)

24 MS. JONES: What was the, I can't remember
25 what the last number we used. Was it 12?

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1 MS. HENDERSON: I don't remember, but if
2 we've got a gap it won't hurt anything. Why
3 don't we just start at 15.

4 MS. JONES: Let's start at 15.

5 (Document was marked for identification as
6 Plaintiff's Exhibit No. 15.)

7 Q (BY MS. JONES) I'm going to show you what
8 I've marked as Plaintiff's 15, and it is the resume
9 that you just handed me; is that correct?

10 A Yes, it is.

11 Q And that is your resume?

12 A Yes.

13 Q And it contains your address and your
14 educational background?

15 A Yes, ma'am.

16 Q And your work history?

17 A Yes.

18 Q Is it pretty much a complete description
19 of all of those categories?

20 A It is, including my professional
21 affiliations.

22 Q Your professional affiliations, you are a
23 certified planner; is that correct?

24 A That's correct.

25 Q And Master of Arts, what kind of arts did

1 you get a master's in?

2 A I actually got it in urban geography from
3 the University of Chicago.

4 Q Is that where you're from?

5 A No. I'm from Minnesota.

6 Q Minnesota, okay. You have been the
7 director of community development since the
8 inception of the city of Sandy Springs?

9 A That's correct.

10 Q And immediately before that, who was The
11 Collaborative Firm?

12 A The Collaborative Firm is a consulting
13 firm, and I was part of that for a couple of years,
14 mostly on a part-time basis.

15 Q And who were your other collaborators?

16 A Michael Hightower.

17 Q And did you provide consulting services to
18 private property owners?

19 A Some to private property owners. Our
20 largest contracts were actually governmental
21 contracts.

22 Q What governments did you --

23 A Newton County I spent about a year.

24 MR. DILLARD: I had forgotten that. You
25 did that through Michael's group?

1 THE WITNESS: No. We actually did the
2 restudy of the reformulation of the planning
3 department. They did, they had all paper
4 records, and they, we reassessed how it should
5 be organized and what staffing they should have
6 and what kinds of computer systems they should
7 have.

8 MR. DILLARD: Did you work with Robert?

9 THE WITNESS: I'm sorry?

10 MR. DILLARD: Did you work for Robert?
11 Paulson, isn't that his name?

12 THE WITNESS: No, huh-uh.

13 MR. DILLARD: Sorry to interrupt.

14 THE WITNESS: It's been a while.

15 Q (BY MS. JONES) So from October 5th to the
16 present and you are presently the director of
17 community development for Sandy Springs?

18 A That's correct.

19 Q And what are your duties as the director
20 of development?

21 A The community development department
22 comprises three major areas, planning and zoning,
23 land and building development, and code enforcement.

24 Q And do you oversee all three of those
25 areas?

1 A I do.

2 Q Who do you have working immediately under
3 you in planning and zoning?

4 A That would be Patrice Ruffin.

5 Q How about in the land and building
6 development?

7 A Blake Dettwiler.

8 Q Blake, okay.

9 A D-e-t-t-w-i-l-e-r.

10 Q Former green shirt?

11 A Yes. Yes.

12 Q Blake and I have our history --

13 A Okay.

14 Q -- from Fulton County.

15 A Yes.

16 Q And then code enforcement?

17 A Marcus Kellum.

18 Q In terms of hands-on work in the planning
19 and zoning area, what would, describe what your
20 involvement is.

21 A On a zoning case I do the final review.
22 All recommendations that come from the department
23 are signed off on by the director because it's a
24 departmental recommendation. Generally through the
25 process we have initial review of the cases, and we

1 discuss how they're going to be handled. And then
2 there are several reviews that involve multiple
3 levels within the department as the case processing
4 goes through.

5 Q Do you meet with the applicant at the
6 beginning of the case?

7 A I may or may not, depending on, on the
8 circumstances. Sometimes they'll meet with me;
9 sometimes they'll meet with Patrice; sometimes
10 they'll meet with both of us.

11 Q You say you do the final review. Are you
12 active in developing the staff report as the review
13 progresses?

14 A I am active in ensuring that the, all of
15 the issues that must be addressed in the case are
16 addressed. And it is my final determination on
17 whether or not the request meets the policies of the
18 City because that's the guidance that we have in
19 terms of our final recommendation.

20 Q Is there a place in the code that states
21 what your authority is in terms of meeting of
22 recommendations and how your recommendations are to
23 be considered by the council?

24 A In the sense that there are separate
25 recommendations coming from the planning commission

1 and from the staff, I believe that's in the zoning
2 ordinance. The, in terms of how we internally
3 prepare those reports, that would be, that's a
4 management issue and not a code issue.

5 Q So you are the one who decides how the
6 report gets prepared and presented to the planning
7 commission; is that correct?

8 A I am the, I, I make the final decisions on
9 it. I may not make all of the decisions on it
10 because if someone comes up with a great idea
11 they're, obviously I'm going to be listening to my
12 staff because they're doing the reviews.

13 Q What specifically are Patrice Ruffin's
14 duties?

15 A She manages the preparation of all zoning
16 cases, all variances, all modifications, any
17 amendments to the zoning ordinance, and she oversees
18 the comprehensive plan.

19 Q And what is your involvement with the land
20 and building development area?

21 A It's really the same as it is in the
22 other, which is that I'm ultimately responsible for
23 all decisions made. And I work with each of my
24 assistant directors in consultation on issues, but
25 the final decisions on issues are mine. And I am

1 the, actually the building officer for the City. So
2 I sign all certificates of occupancy.

3 Q Would that department encompass land
4 disturbance permits and other types of permits?

5 A It, it includes both land disturbance
6 permits and the inspections of those. And it
7 includes building permits and the inspections of
8 those because those are two very different
9 functions. And all of the permitting process.

10 Q Now, would variances fall under this
11 category, or do they fall under the planning and
12 zoning?

13 A Zoning variances fall under planning and
14 zoning. There are variances to other ordinances,
15 and in Sandy Springs' code all variances related to
16 development-related issues are handled by what is
17 called the board of appeals. And so they not only
18 oversee zoning issues, they oversee the tributary
19 buffer ordinance, the tree ordinance, the land
20 development regulations, the international property
21 maintenance code.

22 All of the, the codes that, that this
23 department is responsible for are actually, any
24 appeals to those are heard by the board of appeals.
25 And so the resident experts in each of those areas

1 would be within the divisions, but the paperwork is
2 actually processed through the planning and zoning
3 division.

4 Q And how about code enforcement, what is
5 your involvement in the activities of the code
6 enforcement department?

7 A Well, very similar to the others. And
8 that is that I'm, I'm ultimately responsible, but
9 all of the, the day-to-day administration is handled
10 by Marcus Kellum.

11 Q In the code enforcement area, how is that
12 divided up in terms of policing and actual
13 enforcement about violations? What are the areas
14 that code enforcement involves itself in?

15 A Well, code enforcement is responsible for
16 the enforcement of the international property
17 maintenance code. It is responsible for a couple of
18 other codes that probably you're not interested in,
19 such as the solid waste management code and the
20 hours of collection and so on and the zoning
21 ordinance. And they would be responsible for the
22 enforcement of zoning ordinance in the field,
23 whether it is the sign regulations within the zoning
24 ordinance or whether it is use provisions in the
25 zoning ordinance or whether it is other provisions

1 of the zoning ordinance.

2 The enforcement of construction-related
3 issues, if there is a permit on a piece of property,
4 then that enforcement is done in the land
5 development division. They, either the land
6 development inspectors, the arborists, or the
7 building inspectors would do the enforcement in
8 those areas when there is a permit. Code
9 enforcement deals essentially with property,
10 unpermitted properties, existing uses and the issues
11 that are related to those.

12 Now, they may be involved in construction
13 noise issues, which is, which are permitted sites,
14 but other than that they're generally not involved
15 with construction sites.

16 Q Going back to the planning and zoning, I
17 want to talk about the process in Sandy Springs.
18 When some, an applicant comes to Sandy Springs to
19 get a rezoning, who wants a rezoning and submits an
20 application, what does the City do with that
21 application at the onset?

22 A Can I give you the overall process and
23 then go back to what we --

24 Q Sure.

25 A -- do at the beginning? It might put it

1 into context.

2 Q Okay.

3 A We have what is called 120-day process
4 from filing deadline till a case goes before the
5 mayor and city council. There is a requirement that
6 an applicant have a preapplication conference with a
7 planner to ensure that the application is
8 essentially complete before it is filed.

9 And there is a sign-off sheet that they
10 have to bring in when they bring their application
11 in, which shows that they've had a preapplication
12 conference. In part that is because in Sandy
13 Springs most properties are existing buildings and
14 existing properties, and so we need to make sure
15 that all the necessary concurrent variances come
16 hand in hand with the zoning application. And so
17 we, that process is in place.

18 Then begins the 120-day process. The
19 filing deadline is the first Tuesday of each month.
20 There is then a subsequent community zoning
21 information meeting which is handled, is held once a
22 month for all applications that were filed. And
23 that, at that time the applicant and the planner are
24 present, and anybody from the community that wants
25 to come can learn about the application and ask

1 initial questions and identify themselves as being
2 interested in the case.

3 Subsequent to that the staff comes back
4 and circulates the information regarding the case to
5 all of the appropriate departments within the city
6 and outside the city that require comments. And
7 that would be everything from Fulton County Health
8 and Fulton County Public Works, City of Atlanta
9 Water, board of education, and then city agencies
10 and Georgia DOT. There are just a whole multitude
11 of those, and they go, go to all of those at one
12 time, including the city departments.

13 Internally we then have what is called the
14 focus meeting. And at that time the staffs from the
15 various city departments that are assigned to make
16 comments to us come together, review the plans with
17 our staff, and then they go back and prepare their
18 written report and send that to us. That, those are
19 the formal comments on the case.

20 Once we have that information plus the
21 information from the applicant and any other
22 research that the planner would have done based on
23 the review of the case and the determination of what
24 information we would need in the case, we then start
25 putting together a preliminary report. And that

1 preliminary report is done so that we can begin to
2 outline the issues and make sure that we're
3 complete, and we also prepare a preliminary set of
4 conditions of zoning.

5 Because whether the staff recommends
6 approval or denial, we must put forward a set of
7 conditions that should the mayor and council choose
8 to approve they will have available to them. So we
9 always do a preliminary set of conditions. Once we
10 have those preliminary conditions, we go to what is
11 called the community developer resolution meeting.

12 And, again, those folks that came to the
13 community zoning information meeting and anyone else
14 who is interested can come. The applicant's
15 required to be there; anybody else that has an
16 interest is there, and we talk about issues related
17 to the case and any suggested changes to the
18 conditions that we have prepared preliminarily.
19 Following that meeting we come back, assess all of
20 the information we have up to that point, and put
21 together our report and go through the review
22 process to get that report to the planning
23 commission.

24 I'm not going to go into the advertising
25 because the advertising is what advertising always

1 is on zoning cases under state law. But that report
2 then goes to the planning commission, and the
3 planning commission holds its public hearing and
4 makes its recommendation on the case. And that goes
5 forward to the mayor and council. The staff's
6 report goes separately to the mayor and council, and
7 both recommendations are before them.

8 If the case is located in the city's,
9 Sandy Springs overlay district, then it will have
10 also been going to the design review board during
11 the period prior to the community developer
12 resolution meetings so that they can make any
13 comments on the overlay district requirements so
14 that they will go to the planning commission and on
15 to the council. All of that is then transmitted to
16 the mayor and council.

17 Q And we know --

18 A And they will do their --

19 Q -- what happens then.

20 A And then they have the opportunity to do
21 whatever they think is appropriate with the case.

22 Q At what point in this process does the
23 staff do an analysis of the code requirements for
24 the rezoning application?

25 A It would be in, in those, between the

1 filing deadline and the time that it goes to
2 planning commission, we should have completed our
3 review of everything that we're aware of. I'm not
4 suggesting that there couldn't be issues that arise
5 after the fact, but we, to the best of our ability
6 we try to analyze the information that we have and
7 the codes that, that address it.

8 Q And who is responsible for that analysis?

9 A Well, it's really the total staff. I mean
10 it is, this is a team effort. There is a planner
11 who is responsible for preparing the case. There is
12 a zoning administrator who assists in working
13 through the code requirements. There is an
14 assistant director who is involved. And depending
15 on where the codes are located, people from other
16 divisions or other departments are involved in the
17 assessment of the code. All of that occurs
18 concurrently. And when it comes to me, I can also
19 raise issues about it. It's, this is an ongoing
20 conversation until it's done.

21 Q Who in particular would make a
22 determination about how much parking a project would
23 need?

24 A That would be done in the planning
25 division. I don't know that I would say it's an

1 individual decision. It is an analysis that would
2 be done as part of review.

3 Q What are the names of the people who would
4 do that analysis?

5 A The analysis would be done by the assigned
6 planner and the assistant director. The zoning
7 administrator may be involved, and they would
8 certainly discuss it with me if there were issues.

9 Q So that pretty much involves the entire
10 department in terms of doing the parking analysis?

11 A The parking analysis would be initially
12 looked up by the planner, discussed with the
13 assistant director and the zoning administrator, and
14 reviewed by me.

15 Q The assistant director is?

16 A Patrice Ruffin.

17 Q And the zoning administrator is?

18 A Asay Sarkaraldo.

19 Q And then the assigned planner, how many
20 assigned planners do you have?

21 A On this case I believe there was one, and
22 that was Linda Aberay.

23 Q Now, you signed a set of interrogatory
24 responses on behalf of the City. We sent
25 interrogatories to the City, and they were answered

1 in a written form; and you were the person who
2 verified the interrogatory responses. Did you
3 actually review and supply the information for the
4 interrogatory responses?

5 A Well, the department provided the, the
6 information, and I believe probably both Patrice and
7 I reviewed it.

8 Q You don't remember specifically reviewing
9 your interrogatory, the City's interrogatory
10 responses?

11 A Oh, I'm, I know that I did. I don't, I
12 don't remember precisely now.

13 Q Well, you said probably. I thought
14 well --

15 A No. Probably was I thought that Patrice
16 had reviewed it as well.

17 Q In your interrogatory responses you, in
18 the interrogatories you were asked to state with
19 specificity the compelling governmental interest you
20 contend justifies denial of the Church of
21 Scientology application as requested. And the
22 denial being that less density --

23 A I, I --

24 Q -- was recommended.

25 A -- I wouldn't view it as a denial. I,

1 this is an approval with conditions.

2 Q Okay. But it was denied as requested
3 because they requested forty-three thousand some odd
4 square feet, and they only got thirty-two.

5 A Well, I don't, that's not a denial. A
6 denial would be to recommend denial of the case,
7 and, and this was not that. This was a
8 recommendation to approve it at a density we thought
9 was appropriate for the site.

10 Q I'm not going to quibble with you about
11 the semantics of this, but basically I'm asking you
12 what the compelling governmental interest, what
13 compelling governmental interest was served by
14 recommending 32,053 square feet as opposed to the
15 square feet requested by the Church of Scientology?

16 MS. HENDERSON: I'm going to object, but
17 you can answer.

18 THE WITNESS: Okay. The, the issue that I
19 was unable to, to address was the issue of
20 sufficient parking for the larger square
21 footage. We worked very hard to find a
22 solution to that, and I was unable to do that.

23 Q (BY MS. JONES) Let me give you the
24 question again. I'm asking you what compelling
25 governmental interest was served by the

1 recommendation for 32,000 square feet.

2 A Insufficient parking creates a public
3 safety issue related to the site, and that is the
4 public interest that, that was involved.

5 Q Do you understand what the term compelling
6 governmental interest means as a matter of law?

7 MS. HENDERSON: Objection.

8 THE WITNESS: No. I'm not a lawyer.

9 Q (BY MS. JONES) Did your lawyer explain to
10 you what a compelling governmental interest is?

11 A I don't know that I know what a compelling
12 governmental interest is.

13 Q Do you believe parking constitutes a
14 compelling governmental interest?

15 MS. HENDERSON: I'm going to object. You
16 can answer.

17 THE WITNESS: Okay. I believe that the
18 inability of people to park on the site and to
19 back up traffic on the road because they could
20 not get in and out of the site because there is
21 insufficient parking is a public safety issue.

22 Q (BY MS. JONES) And I don't mean to belabor
23 this, but is it "compelling"?

24 A If the --

25 MS. HENDERSON: Objection.

1 THE WITNESS: -- traffic is backing up
2 onto Roswell Road and backing up one lane of
3 traffic, I believe that is a compelling public
4 interest.

5 Q (BY MS. JONES) Does the Scientology
6 property have an entrance from Roswell Road onto the
7 property?

8 A Yes, it does.

9 Q And does it go to the parking?

10 A Yes, it does.

11 Q Behind the building? Would it be possible
12 to alleviate that problem by putting someone at the
13 entrance that would prohibit cars from going in once
14 the lot was full?

15 A That would be another option. I don't
16 know that, that anyone volunteered to provide that
17 kind of service.

18 Q Do you ever park down at Fulton County?
19 When you worked down at Fulton County, did you ever
20 park in that building across the street from the
21 Fulton County governmental administrative building?

22 A On both, in both of the parking decks,
23 yes.

24 Q And did you ever experience a sign out
25 front that said lot full?

1 A I did indeed.

2 Q And did you move on when the lot -- well,
3 you probably didn't have to. You probably had a
4 monthly parking pass.

5 A I did.

6 Q But that is one way it could have been
7 handled to keep cars from backing up on MLK?

8 MS. HENDERSON: Objection.

9 THE WITNESS: Well, it's, it's a possible
10 way to do it if someone is willing to do that
11 during the periods of operation of the
12 facility.

13 Q (BY MS. JONES) Did the City suggest that
14 as a possibility?

15 A I didn't know that it was my
16 responsibility to suggest to the applicant how they
17 address the issue. I addressed the issue in terms
18 of the ability to park on the site. I addressed the
19 issue of what the problem was. It is not the City's
20 obligation, in my view, to prepare the plan for the
21 applicant in order to suggest something which
22 clearly had a significant expense to it. The
23 applicant came forward with another alternative and
24 discussed that with us, and we were perfectly
25 willing to discuss it with them; but it, it would

1 not be our obligation to prepare an application for
2 an applicant.

3 Q Nor would it be your obligation to come up
4 with a lesser restrictive means to achieve your
5 compelling government interest?

6 MS. HENDERSON: Objection.

7 THE WITNESS: If the applicant had
8 suggested it, I would have evaluated it to see
9 whether it was something that could be done.
10 It was never suggested to us during the, the
11 four deferrals that we had from the mayor, or
12 the four hearings that we had with the mayor
13 and city council, that never arose as an issue.

14 Q (BY MS. JONES) And I don't want to belabor
15 this either, but I just want to make sure that I'm
16 understanding what you're saying, and that is that
17 the City never suggested that some sort of signage
18 or, or gate or, or monitoring of the entrance off of
19 Roswell Road be instituted by the Church of
20 Scientology to control the flow of traffic on
21 Roswell Road?

22 A Well, it's not to control the flow of
23 traffic on Roswell Road. It's to ensure that the
24 traffic going into the facility does not slow down
25 the traffic on Roswell Road and impede it in the

1 outside and, and turning lanes. And as you know,
2 that is an intersection where we have a variety of
3 turning lines so there's several lanes that would be
4 impacted by that.

5 Q So phrased that way, the City never
6 suggested an alternate, the idea of gating or
7 blocking or monitoring the entrance?

8 A I'm not aware that anyone on either,
9 either the applicant nor the City suggested that
10 alternative.

11 Q Were there any other issues regarding
12 ingress and egress to the Church of Scientology
13 property other than perhaps blocking traffic on
14 Roswell Road?

15 A The, the City's policy is that parking
16 should be provided on site and if the parking is not
17 capable of being located on site, that there is an
18 appropriate arrangement for off-site parking for
19 required parking. We were never presented with an
20 alternative that met the requirements of the
21 ordinance other than the existing off-site parking,
22 which is located on the post office property, which
23 we showed as continuing forward.

24 But we, there was never, there were
25 alternatives discussed, but there were, there, there

1 was nothing presented which we could then
2 incorporate as part of the case.

3 Q Now, No. 9 of the interrogatories asks the
4 City to identify every church or place of worship
5 for which the City has issued a permit, granted a
6 variance, or approved a zoning application from
7 December 31, 2005 to the present, along with the
8 zoning variance or building permit number
9 associated. And the City did provide a list of, in
10 their responses of churches on an Exhibit D.

11 MS. JONES: I hate the way these exhibits
12 are attachments instead of in the
13 interrogatories.

14 MS. HENDERSON: We provided you so much
15 information that it seemed a systematic way to
16 organize it.

17 MS. JONES: I guess I'm just not used to
18 that much of a system.

19 Q (BY MS. JONES) Well, within the body of
20 the interrogatories the City listed a number of, a
21 number of places of worship. And I'm going to go
22 through those places of worship and ask you to tell
23 me how the parking, required parking, was calculated
24 for each one of these locations in the ones that you
25 have named. Sandy Springs Christian Church, and it

1 was approved on April 15th, 2009. What method of
2 calculating the required parking was used for
3 approval of the Sandy Springs Christian Church
4 variance?

5 A I would have to go back and look at the
6 case in order to tell you that. I can't tell you
7 from memory.

8 Q Has the City ever used any method of
9 calculating required parking for a church or place
10 of worship other than applying Zoning Ordinance
11 18.1?

12 A For the main church, no. For related
13 uses, yes.

14 Q When you say for the related church --

15 A Related uses.

16 Q Related uses.

17 A There are schools and day-care facilities
18 and a number of other things that are sometimes
19 associated with churches, and those are calculated
20 separately.

21 Q Let's look at the recently approved
22 Lutheran church on the corner of Hammond and
23 Glenridge. That's where it is, across from Hammond
24 Park.

25 A Uh-huh. Yes, it is.

1 Q I rode by there this morning. It is --

2 A A very large facade.

3 Q It's up and at 'em. Now, how was the
4 required parking calculated for that expansion of
5 the Lutheran church?

6 A It was a, based on the place of largest
7 public assembly.

8 Q Does that church have a day care?

9 A It does.

10 Q Does that church have a school?

11 A I don't believe so. I think it's just a
12 day care, but I'm not absolutely certain.

13 Q Does it have offices?

14 A Yes.

15 Q Does it have a church library?

16 A I'm sure it does.

17 Q Does it have a church bookstore?

18 A I don't know.

19 Q Was any investigation done as to the
20 separate uses within that church property as it
21 relates to required parking?

22 A I don't believe it was done at the time of
23 zoning, no.

24 Q Has it been done since?

25 A I believe there was some assessment when

1 the certificate of occupancy for the day care, I
2 believe it was the day care was issued.

3 Q And who did that assessment?

4 A That would have been done in planning. I
5 don't know that I can tell you which individual did
6 it.

7 Q How was that assessment done?

8 A I believe it was based on each of the
9 uses, but I'd have to go back and check. I know
10 that there were separate calculations on it. I
11 don't have the details.

12 Q Where is that information kept?

13 A It would be in either the zoning file or
14 it would be in the building permit file. I'm not
15 sure which.

16 Q So at the time of zoning you simply looked
17 at the square footage of the main assembly area and
18 applied 18.1 to that?

19 A Generally that would be the way it would
20 be done, yes.

21 Q That was what was done in the case of the
22 Lutheran church?

23 A Unless, unless it has fixed seating, in
24 which case we would deal with the, the fixed seating
25 provision of the ordinance as opposed to the square

1 footage. Square footage is when there is no fixed
2 seating. And if there are pews, then there's a
3 separate, different calculation.

4 Q Both of those calculations are addressed
5 in 18.1?

6 A Yes.

7 Q For churches or places of worship?

8 A That's correct.

9 Q Is there any other place in the zoning
10 ordinance which sets forth parking requirements for
11 churches and places of worship?

12 A Not that I'm aware of.

13 Q When you say that you would look at
14 related uses such as schools or day care to make the
15 calculation, let's just talk about day care.
16 Looking at day care, are you talking about, not,
17 you're not talking about your nursery during church
18 services, are you?

19 A No. That, a, a nursery during church
20 services is an accessory use to the church. A day
21 care which is operated with a state license is a
22 different issue. And they, when it is being
23 operated as a day care with a dropoff and so on,
24 then it would be handled as a separate but related
25 use.

1 Q Is it the state license that triggers the,
2 the requirement to look at, look at the day care?

3 A No. It's actually spelled out in the
4 zoning ordinance. However, when we do the review
5 in, under the zoning ordinance provisions we then
6 assure ourselves that if it requires state licensing
7 that they do that as well because they deal with a
8 portion of the day care that we don't deal with.
9 Because ours is strictly a land use decision but
10 from a public safety point of view. When we do the
11 conditions of the approval of, say, a day care or a
12 private school, we put a condition in that requires
13 the state license prior to the issuance of the CO.

14 Q When you're talking about private school,
15 you're not talking about, say, Sunday School
16 classrooms or classrooms used by the church as part
17 of their programs?

18 A That's correct. The, a private school
19 under the definition zoning ordinance is spelled out
20 as a school which has a, a, a curriculum which is
21 equivalent to a public school, the Fulton County
22 Public School System.

23 Q I can't remember whether I asked this or
24 not, but I'm going to ask it again. And church
25 offices are not calculated separately, are they?

1 A No. Because they're really accessory to
2 the, the main use. And the church is defined as an
3 assembly use, and so that would be the related
4 accessory use, just as in an office building you
5 have accessory uses in the building that may not be
6 offices but which are considered accessory to the
7 main office use of the building.

8 Would this be an appropriate time to take
9 a break?

10 Q Anytime you want to take a break, Nancy --

11 A If you don't mind.

12 Q -- you go right ahead.

13 (A recess was taken from 10:47 a.m. until
14 10:57 a.m.)

15 Q (BY MS. JONES) In order to jostle your
16 memory some, I'm going to show you a copy that I
17 made --

18 A Uh-huh.

19 Q -- of Defendants' Response to Plaintiff's
20 Interrogatories, which I believe contains your
21 verification at the end on Page 22. You're in the
22 appendix now.

23 A I'm, I'm seeing all the stuff at the end
24 that we gave you, yes. I see the signature.

25 Q And that is your signature?

1 A It is.

2 Q And if you would, go to Page 8, which,
3 well, I guess the question actually is Question
4 No. 9, which is on Page 7, in which I ask you to
5 identify churches and places of worship that the
6 City has issued a permit, granted a variance, or
7 approved a zoning application from December 31st,
8 2005 to the present along with the zoning variance
9 or building permit number associated therewith.

10 A Yes.

11 Q Now, I'm just hoping this will help you
12 remember these individual applications so that you
13 can answer a few questions about them. And the
14 first one is the Sandy Springs Christian Church. It
15 does not appear to involve parking; is that correct?

16 A That's correct. It's a signage request.

17 Q And the second one is the Zainabia
18 Non-Profit, Inc., 1100 Hope Road?

19 A Yes.

20 Q Where is Hope Road?

21 A Hope Road is in the vicinity of Dunwoody.
22 I can show you on a map. It's easier for me to do
23 that. It's, this is Dunwoody Place, and Hope Road
24 is, is in, in this general area here. North of
25 Northridge and --

1 MR. DILLARD: Wasn't that a Medfirst on
2 there?

3 THE WITNESS: Yes, I think so. Yeah,
4 you're right.

5 MR. DILLARD: I have to make some kind of
6 contribution.

7 Q (BY MS. JONES) Was the Zainabia -- I hope
8 I'm saying that right -- Zainabia, Z-a-i-n-a-b-i-a,
9 Non-Profit, Inc., a church or a place of worship?

10 A Yes, it's a place of worship.

11 Q How was the required parking calculated on
12 this property?

13 A The largest place of public assembly.

14 Q Were the variances granted that they
15 requested for no required parking islands and a
16 reduction of required parking spaces?

17 A Yes.

18 Q And was that calculation done under
19 Section 18.1 at sec of the zoning ordinance?

20 A Yes.

21 Q How about the Second Church of Christ
22 Scientist on Carpenter Drive, how was the parking
23 calculated for the, for that church?

24 A That would have been in the place of,
25 largest place of public assembly. Although that's

1 just a, well, it's, it's a church, but it's, it's
2 actually the, a reading library for the church.

3 Q So in that case --

4 A Christ Scientist.

5 Q -- was the reading room considered the
6 largest place of assembly?

7 A Yes.

8 Q Was any other, other code section or
9 requirement attached to that analysis?

10 A No.

11 Q Now, we know about the Church of
12 Scientology so we'll talk about that in more detail
13 in a little while. The Kadampa Meditation Center
14 New York, is that next to Kaiser? Is that where
15 that is?

16 A No. It's up on Peachtree Dunwoody next to
17 the MARTA station.

18 Q And how was the parking, required parking,
19 calculated for that site?

20 A In the largest public assembly.

21 Q Was any other requirement placed on it --

22 A There weren't --

23 Q -- for parking?

24 A -- there weren't any other uses on the
25 site.

1 Q It was to allow for a place of worship and
2 a boarding house. What kind of boarding house did
3 they allow?

4 A They actually have resident monks. And so
5 they, there would have been a separate calculation
6 for the, for the residents, but that's a separate
7 use. There were two uses calculated on that site.
8 But in terms of the, the meditation facility, it was
9 based on the place of public assembly.

10 Q The Congregation Beth --

11 A Tefillah.

12 Q -- Tefillah, how was that calculated?

13 A Well, the preschool was, was calculated
14 based on, it, it's on a separate parcel, and the
15 preschool was calculated as a preschool.

16 Q That wasn't an expansion of the place of
17 worship. It was the addition of a preschool; is
18 that correct?

19 A That's right. They had actually approved
20 the use permit for the adjacent house some time ago,
21 and they came in and, and got, had this done so that
22 they could complete that.

23 Q And this seems to be the use 07003 was
24 approved on the same date for a 2,000 square foot
25 mikvah?

1 A Yes.

2 Q What is a mikvah?

3 A That is, I'm, I'm not sure that I can tell
4 you precisely what it does, but it's just a separate
5 bathing area, I believe. And it is at the back of
6 the site near Georgia 400.

7 Q Was some parking calculation done to
8 analyze the addition of a mikvah at the synagogue?

9 A I don't believe so because in this case it
10 is such a minor use and it's really accessory to the
11 actual church itself. It required, because it was
12 an additional structure it required the additional
13 use permit, but there wasn't any required additional
14 parking. That facility actually had additional
15 parking over and beyond the required.

16 Q Would a certificate of occupancy be
17 required for this additional structure?

18 A I'm not sure of its size and so I'm not
19 sure whether it would or not. If it is less than a
20 hundred square feet, it would not. If it's more
21 than a hundred square feet, we would.

22 Q It says here that it was the addition of a
23 2,000 square foot mikvah?

24 A Then it probably would have had a CO.

25 Q Is there a CO file cabinet or a CO room?

1 Where do you keep the COs?

2 A The COs are issued by, individually, and
3 we have, we have a listing of those that we have
4 issued; and you can certainly get a copy of all of
5 them.

6 Q You say that with some --

7 A There are many.

8 Q -- some pleasure there.

9 A If you want just some, it's more
10 difficult. If you want them all, I'm happy to just
11 do it up. It's because I've signed them I know how
12 many there are.

13 Q The St. Andrews Presbyterian Church --

14 A Yes.

15 Q -- was a use permit to allow for 10,000
16 square feet of the existing 25,000 square foot
17 church to be used for a special foreign language
18 school with a preschool kindergarten component. Did
19 you apply the, did you recalculate the parking
20 required for St. Andrews when you issued this use
21 permit?

22 A There was actually so much additional
23 parking at the church over and beyond what is
24 required for the church that we did the calculation
25 and no additional parking was required.

1 Q But you --

2 A Yeah, we did the calculation. We did the
3 calculation on the school because it was separate
4 from the church.

5 Q And there's a separate calculation for a
6 school than there is for a church?

7 A Yes.

8 Q We'll skip the cell tower.

9 A Extensive parking.

10 Q And then Mount Vernon Highway, Mount
11 Vernon Presbyterian School, any calculation you did
12 on that would have been done under the school
13 calculation?

14 A That's correct.

15 Q Now, Holy Spirit Preparatory School, what
16 calculation did you do for the parking at Holy
17 Spirit's?

18 A It related to the offices and to the
19 fields because there was no place of public assembly
20 church at that location. That, the main building is
21 located elsewhere.

22 Q And so how did you calculate these uses
23 for purposes of parking?

24 A Well, there are, parking, the parking
25 requirements in 18.1 spell out the, the, the parking

1 for athletic fields and also for offices.

2 Q So you applied 18.1 to that?

3 A Yes.

4 Q Did you apply any other, any other
5 calculation in the zoning ordinance from --

6 A No.

7 Q Were there conditions of zoning placed on
8 this Holy Spirit project?

9 A Yes.

10 Q Did they include any special conditions
11 for parking?

12 A I'm not sure I'm, I'm understanding what
13 you're asking.

14 Q Well, you calculated the, the, under 18.1
15 you calculated parking required for the athletic
16 fields?

17 A Yes.

18 Q Then in the conditions of zoning, were
19 there any other conditions relating to parking
20 contained in the conditions of zoning?

21 A There were restrictions in the hours of
22 use of the parking.

23 Q Any other restrictions?

24 A I, without looking at the case I can't
25 remember. It was fairly complicated, and I believe

1 we, there were issues about how the parking was
2 configured and so on; but I would have to go back
3 and, and read that case again to remember exactly.
4 But there were, the parking issues that related to
5 it related not only to the amount of parking but
6 also where it was located, how it came in and out of
7 the site, and where the lighting was located, how
8 high the lighting was, the noise that would impact
9 the neighbors, et cetera.

10 Q The Holy Spirit application for these
11 athletic fields and accessory uses did not fall
12 within the provisions for, or were not considered a
13 church or a place of worship in any form, were they?

14 A No.

15 Q They were a separate secular use?

16 A Well, it was, well, it was a use related
17 to a school. The school happened to be a private
18 school which happened to be a religious school, but
19 it was, it, it just comes under the provisions of
20 the, the use in the ordinance.

21 Q Then we come to the Lutheran Church of
22 Apostles, which we talked about a little bit before.
23 Let me just confirm that the analysis for required
24 parking was based entirely on the size of the main
25 assembly area of the church; is that correct?

1 A As far as I can recollect, that was true.

2 Q Now we're at St. Andrews Presbyterian
3 Church.

4 A You actually saw it, you saw the first
5 case, and then you saw the second case. It has come
6 through twice. It was, there was one addition, and
7 then there was a second case. The first one was in
8 '07. The second one was in '09 when they expanded
9 the use.

10 Q And they increased the size of the church
11 by 2,000 square feet?

12 A Yes.

13 Q And was the calculation for parking done
14 under 18.1 for a church and place of worship?

15 A And for the school.

16 Q So the 2,000 square foot addition to the
17 existing church, was that separate from the use
18 permit to expand enrollment at the existing school?

19 A Let me explain. These were concurrent
20 filings. And the reason they were concurrent is
21 because the expansion was actually to expand the
22 church so that the school could take an additional
23 2,000 square feet of the existing church. So the
24 church did not expand except in the sense that the
25 building is one building and the use was actually

1 the expansion of the school use.

2 Q So you calculated this as the expansion of
3 a school as opposed to the expansion of a church?

4 A We did.

5 Q That took some explaining.

6 A Well, that was a very complicated case. I
7 can actually remember it fairly well because I spent
8 a lot of time on it.

9 Q Now we have the Holy Innocents Episcopal
10 Church and School. It says use permits to revise
11 the existing church, private school, and day-care
12 facility uses and property with concurrent
13 variances. That happened just last December, it
14 appears?

15 A Yes.

16 Q Took it a long time. No. I guess '09 to
17 '05 to '09. What revision did they make to the
18 existing church?

19 A They did a minor addition to the existing
20 church, a minor expansion to the church, and they
21 also added a cemetery addition. And then they
22 reconfigured the site plan. They did not add
23 students to the school, but they reconfigured the
24 site plan to make it a more usable campus.

25 Q Was the parking requirement for the minor

1 expansion, or was there an increased parking
2 requirement for the minor expansion to the church?

3 A I don't believe it, it really required any
4 additional because of the shared parking provisions
5 of the school and the church.

6 Q And if I'm understanding how it's all
7 done, the school and the day-care facilities got
8 their own analysis for the parking?

9 A They did.

10 Q Now Mount Vernon Presbyterian is wanting
11 to modify again. That was for the classrooms only?

12 A It appears. And I, I don't remember the
13 details of this, but it appears that it modifies the
14 site plan for the, the school with concurrent
15 variances, but it's not an addition of anything.

16 Q Okay. Good.

17 MS. HENDERSON: Better?

18 MS. JONES: Much better.

19 Q (BY MS. JONES) It always helps, I guess,
20 to have your memory tickled a little bit.

21 A There are a lot of cases. It's hard to
22 remember. You might want that back.

23 MS. JONES: Here, Doug. You can put that
24 back in your book.

25 Q (BY MS. JONES) Oh, just a question. We

1 asked for the identity of every church or place of
2 worship within the city limits of Sandy Springs.
3 And I just was curious; the list starts with nine.
4 And I was just -- you can look on there; that's
5 Exhibit A to the list -- if there were one through
6 nine someplace and one through eight someplace else,
7 or was that just a typo?

8 A I don't know. I'd have to go ask.

9 MS. HENDERSON: That's a good question.

10 THE WITNESS: Well, we can check while
11 you're here.

12 MS. HENDERSON: It could be that a page
13 stuck together in copying. We can --

14 MS. JONES: Okay.

15 MS. HENDERSON: This came from the City so
16 we can, we'll check on a break. How about
17 that?

18 MS. JONES: That's fine. You know, it
19 could be any reason why it started with nine,
20 you know. Maybe just the numbering system was
21 off, but, okay.

22 Q (BY MS. JONES) Okay. I guess we can let
23 you look back on, on the responses again just
24 because this is kind of a complicated response. I
25 asked on Interrogatory No. 11 for the City to

1 identify each harm or detriment to the public
2 health, safety, morals, and welfare that you contend
3 would result from plaintiff's proposed use of the
4 property and that is, and all evidence you contend
5 supports the alleged harm or detriment to the public
6 health, safety, morals, and welfare.

7 And you responded by referring me to your
8 interrogatory response to, to number, to No. 8 and
9 13. So, and it appears that No. 13 is a, is an
10 expanded response to that particular interrogatory,
11 and we've already talked about that the, that you
12 found a harm to the public safety as a result of the
13 inadequate parking proposed. But I'm curious about
14 the response that says, quote, disallowing
15 conversion of the underground parking deck is a
16 mitigating measure for proposed church use. Could
17 you explain what that means?

18 A It means that if the conversion of the
19 underground parking is not allowed, then that
20 mitigates the impact of not having enough parking on
21 the site and it becomes inadequate.

22 Q You're not saying that it mitigates the
23 impact to the Church of Scientology as a result of
24 not having the requested square footage?

25 A I didn't understand that that was the

1 question. It was my understanding that the, that
2 this would mitigate the effect that it would have on
3 adjoining properties which was the question.

4 Q Well, actually the question was --

5 A It says to any perceived harmful effect
6 that the proposed church would have on adjoining
7 properties or on the City.

8 Q That was Question No. 13.

9 A Right.

10 Q And you're answering, Question No. 11
11 refers to your answer to No. 13.

12 A Okay. And so what, so what I have to do
13 is look at Question 11. I'm --

14 Q See what I'm talking about?

15 A So let me see what No. 11 says. Okay.
16 Well, the public health, safety, morals, and welfare
17 would be the same as -- just a minute, let me
18 finish -- the public health, safety, and morals and
19 welfare is also, is the impact on the neighbors and
20 on the right-of-way.

21 Q It's asking for the evidence that, that
22 the City relied on to come to the conclusion that
23 there would be a negative impact on the neighbors.

24 A Well --

25 MS. HENDERSON: I'm going to object to the

1 question. You can answer to the extent you
2 can.

3 THE WITNESS: The evidence is that the
4 parking is insufficient to accommodate the use
5 proposed on the site according to our
6 calculations. And based on that, the potential
7 is that it will impact the neighbors because
8 folks will be parking in other locations, which
9 would potentially impact the neighbors. They
10 may be parking in the neighborhoods.

11 Q (BY MS. JONES) But they wouldn't be
12 parking on Roswell Road?

13 A They certainly would not.

14 Q Well --

15 A Not if they had any common sense.

16 Q They could potentially be parking in the
17 post office?

18 A They could.

19 Q And, in fact, they have an easement at the
20 post office?

21 A For a portion of the post office parking
22 but not all of the post office parking.

23 Q What neighborhoods do you think that they
24 could potentially be parking in?

25 A Well, they could be parking in residential

1 areas around there. They could be parking in the
2 office next door. There are other properties in the
3 vicinity that have parking. And so to the extent
4 that they're there, they have an impact on, on those
5 uses as well. And those are parking areas that are
6 spelled out for their use.

7 Q Well, the office next door could boot
8 them, correct?

9 A They could, but they would have to go
10 through the effort to do that. And that's the, the,
11 the difficulty is that they, it has to occur before
12 you can address the issue unless you go to the
13 additional expense of controlling the access to
14 your, your site with a gate.

15 Q Or unless it might not occur?

16 A If it didn't occur, it wouldn't be a
17 problem. But I, you're asking what could
18 potentially happen if there is not enough parking on
19 site and people are coming looking for a place to
20 park. And my comment is that they'll look for
21 another place to park and they'll look for something
22 that is available in the vicinity so they can come
23 back to the site. If I were coming north on Roswell
24 Road and I couldn't get into that site, I would
25 probably go to the next driveway, which is the

1 office building.

2 Q Can you point to a situation or an
3 instance in which that happened where there was
4 insufficient parking at a church or place of worship
5 and the people coming parked in neighborhoods or on
6 streets?

7 A Yes. I have a wonderful example. It is
8 at Belle Isle and Roswell Road, and it is no longer
9 there. And I cannot remember the name of the
10 church, but it was --

11 Q Buckhead?

12 A Yeah. Yes. And it was a huge problem.
13 And there was insufficient parking on the site, and
14 parking was on the street and in the neighborhoods.
15 And there were continuing complaints about it over
16 an extended period of time until the church moved.

17 Q And in that case the overcrowding and the
18 parking and traffic issues occurred during Sunday
19 church services, correct?

20 A Yes.

21 Q It wasn't constant. It was just when they
22 filled up that church on Sunday morning with all
23 those young people?

24 A It was a place of public assembly, and
25 that was their main time of assembly, I agree.

1 Q And they all came like at the same time?

2 A That's correct.

3 Q I myself experienced the Buckhead Church
4 going to that Kroger. No. 13, which we've already
5 talked about the response to No. 13, the
6 interrogatory was asking the City to identify every
7 measure considered or suggested by the City to
8 mitigate any perceived harmful effect the proposed
9 church would have on the adjoining properties or on
10 the City. The response --

11 MS. JONES: Can I have the thing back,
12 Doug?

13 Q (BY MS. JONES) I just want to ask you some
14 questions about the response as sort of down toward
15 the middle of the response you say "Parking
16 requirements are a separate, nonreligious use apart
17 from the church itself." What does that mean, a
18 separate, nonreligious use apart from the church
19 itself?

20 A The parking is looked at as related to a
21 place of public assembly, whether it is a church or
22 some other use. And so the parking is viewed as
23 being related to the place of public assembly.

24 Q Well, isn't it true though that the
25 parking ordinance, the 18.1 sec specifically,

1 identifies churches and places of worship and
2 assigns a parking calculation specifically for
3 churches and places of worship?

4 A It does. And --

5 MS. HENDERSON: Objection.

6 THE WITNESS: -- indeed it spells out in
7 that provision and the ordinance calls a church
8 a place of assembly. And so that is the basis
9 on which we, I'm saying that.

10 Q (BY MS. JONES) So the City does not
11 distinguish between one place of, between a place of
12 assembly and a church or place of worship; is that
13 what you're saying?

14 A No. What I'm saying is that a church is
15 one type of assembly.

16 Q Church parking is considered a
17 nonreligious use; is that what you're saying?

18 A What I'm saying is that it would be
19 required of any assembly, whether it is a church or
20 some other form of assembly.

21 Q Is the parking requirement for an
22 assembly the same as for a church or place of
23 worship?

24 A I'm going to have to check it to make
25 absolutely sure.

1 Q Well, let me give you the zoning
2 ordinance.

3 A Well, I have it here.

4 Q Yeah. Let me just mark it and I'll let
5 you look at it. You can look at it in your book
6 too.

7 A It's easier to --

8 MS. HENDERSON: I mean I'll be happy to
9 have you mark a portion of the zoning ordinance
10 and allow her to use it, but I'm going to
11 object to three pages being characterized as a
12 zoning ordinance when it's something like three
13 hundred and seventy pages.

14 MS. JONES: I'm not characterizing it as a
15 zoning ordinance. It is the portion of the
16 zoning ordinance pertaining to off-street
17 parking and loading.

18 MS. HENDERSON: And I object as it being
19 complete when there are other interrelated
20 sections of the zoning ordinance that impact
21 use of that provision.

22 MS. JONES: Well, you can object. And
23 Ms. Leathers --

24 MS. HENDERSON: And all I'm doing is
25 preserving it.

1 Q (BY MS. JONES) -- Ms. Leathers can look
2 through the book, but I'm going to just show for
3 purposes of identification Plaintiff's Exhibit
4 No. 16.

5 (Document was marked for identification as
6 Plaintiff's Exhibit No. 16.)

7 Q (BY MS. JONES) Which I would note has the
8 Bates Stamp Nos. 731 through 736 which were placed
9 on there by the City or its counsel.

10 THE WITNESS: They're similar but not
11 precisely the same.

12 Q (BY MS. JONES) Assembly places with fixed
13 seating refers to stadiums, auditoriums, theaters,
14 and amphitheaters, correct?

15 A With fixed seating. And assembly places
16 without fixed seating would be malls, libraries, et
17 cetera.

18 Q Church is not one of those types of
19 uses --

20 A No.

21 Q -- under assembly places with fixed
22 seating?

23 A No.

24 Q And then, of course, we talked about
25 churches, cathedrals, and temples which fit under

1 churches and other places of worship?

2 A Yes.

3 Q So the applicable criteria to be placed on
4 a church or place of worship is the criteria
5 contained under that section as opposed to assembly
6 places with fixed seating?

7 A Well, I guess what I was trying to say in
8 my answer is there are several types of assembly.
9 And one is in the general assembly discussion, and
10 the other is under churches, which are also an
11 assembly type but they're calculated separately.
12 Just as there is office general and there's office
13 medical, which are different.

14 (Discussion ensued off the record.)

15 Q (BY MS. JONES) And it says, then you go on
16 to say in your answer to No. 13 down toward the
17 bottom of Page 13, allowing use of the post office
18 parking easement, although it would be practically
19 unavailable for much of the business day, is another
20 mitigating measure.

21 A Yes.

22 Q What evidence do you have that the post
23 office parking easement would be practically
24 unavailable for much of the business day?

25 A The, at least the times that I have been

1 there, the post office parking area has been quite
2 full, but that's an observation.

3 Q Did the City do any study of the
4 availability of the post office parking easement?

5 A No. And, of course, that varies,
6 depending on season and on day of the week and time
7 of day.

8 Q Let me show you what's marked as
9 Plaintiff's No. 17.

10 (Document was marked for identification as
11 Plaintiff's Exhibit No. 17.)

12 Q (BY MS. JONES) And this is produced by the
13 City, and it appears to represent the post office
14 parking with an area marked out on the left side of
15 the page.

16 A Yes.

17 Q Is that where you believe to be the post
18 office parking easement for the Church of
19 Scientology is?

20 A That's my understanding.

21 Q Is that a landscape island that's shown
22 between those parking spaces and the post office
23 parking lot?

24 A Yes.

25 Q Now, have you observed people during the

1 day using that area within that easement area for
2 post office parking?

3 A I view that as an overflow area. I don't
4 know when, if I see cars in there I don't know who
5 they belong to.

6 Q It could be local people just using the
7 Church of Scientology's --

8 A It --

9 Q -- yard to park?

10 A -- it could. I'm, I mean I'm not, because
11 I would never know who belongs to any of the
12 vehicles in the lot.

13 Q So when you say it would be practically
14 unavailable for much of the business day, you want
15 to limit that somewhat, that statement?

16 A Well, I'm, I guess what I'm saying is the
17 business day would be the time period when it has
18 the potential to be unavailable. Certainly after
19 hours when the post office is not open, that would
20 certainly be an available space.

21 Q What does practically unavailable mean?

22 A If it's not, if it's in use by someone
23 else it wouldn't be available totally or
24 partially.

25 Q So practically means in practice --

1 A Yeah.

2 Q -- it would be unavailable? And have you
3 noticed that practice?

4 A I have seen cars in there. I do not know
5 who they belong to.

6 Q How many cars have you seen in that
7 particular area at any one time?

8 A I don't recollect. I've been past a
9 number of times, but I don't know that I could tell
10 you how many were in there.

11 Q And the City made no effort to determine
12 whether post office patrons were using this easement
13 area?

14 A The reality is that, that this was
15 calculated as part of the required parking for the
16 building.

17 Q The post office, what time does the post
18 office close? 5:00? 6:00?

19 A I believe it's 5:00, but I'm not
20 absolutely certain. And I believe they open at
21 9:00.

22 Q So they are closed in the evening. They
23 don't stay open in the evenings, correct?

24 A No. I don't believe this one is open in
25 the evening.

1 Q They close a half a day on Saturday?

2 A I believe they're open in the morning on
3 Saturday but not in the afternoon.

4 Q And they're not open on Sunday?

5 A No.

6 Q So during all those times there would not
7 be a conflict with the post office patrons in using
8 the easement area --

9 A That's correct.

10 Q -- for the church? Now, you further say,
11 in addition, the City held a community zoning
12 information meeting on March 24th, '09 and a
13 community developer resolution meeting on
14 April 23rd, '09. During these meetings mitigating
15 measures are discussed between all parties involved.
16 Who are you referring to?

17 A Both the applicant and any interested
18 parties. If we go back to my discussion about the
19 community zoning information meeting, the community
20 developer resolution meeting at the very beginning,
21 I discussed the fact that those, what we have before
22 the audience at the time that we're talking and who,
23 who was there and who was discussing and what issues
24 are discussed.

25 Q And what were the mitigating measures

1 discussed?

2 A The, I would have to go back and pull the
3 neighbors' comments from the summary that we did of
4 that meeting to see whether they raised any. I
5 believe that in terms of mitigating the parking, I
6 don't recollect that either the applicant or the
7 neighbors presented any mitigating proposals. At, I
8 was not at the community zoning information meeting,
9 but I was at the community developer resolution
10 meeting. I don't recollect that either party raised
11 any mitigating proposals in that meeting for
12 parking.

13 Q Let me clarify that last sentence of your
14 response to No. 13 where you say during these
15 meetings mitigating measures are discussed between
16 all parties involved. And am I understanding you
17 correctly that that would generally be what would
18 happen, but you don't recollect whether that
19 happened or not?

20 A No, I don't, I, I was, I can't tell you
21 what was discussed at the community zoning
22 information meeting because I was not there. But I
23 was at the community developer resolution meeting,
24 and it is not my recollection from that meeting,
25 without going and checking the detailed notes, that

1 anyone on either side raised any mitigating measures
2 regarding parking. The issue was raised, and the
3 issue was discussed; but no one mentioned any
4 mitigating measures in that meeting.

5 Q So in what context was mitigating measures
6 discussed?

7 A Well, there are all kinds of mitigating
8 measures that can occur in a zoning case. As you
9 know, the impact of the use needs to be assessed
10 against the, the, the, against the surrounding uses.
11 And so there were discussions of traffic issues.
12 There were discussions of the, there was discussion,
13 significant discussion of parking issue. There were
14 discussions about the maintenance of the building.
15 There were discussions about the landscaping on the
16 site. Those off the top of my head I can remember,
17 and I, if I had the report I, there probably are
18 others.

19 Q At some point the City and the church
20 negotiated alternate conditions to, to address the
21 parking on the site; is that correct?

22 MS. HENDERSON: Object to form. I'm going
23 to ask you to rephrase the question. I don't
24 think that's a correct statement of what
25 occurred.

1 Q (BY MS. JONES) Did the City and the Church
2 of Scientology or its representatives develop a set
3 of negotiated alternate conditions to address
4 parking on the site?

5 MS. HENDERSON: I still object to the form
6 of the question.

7 MS. JONES: What do you object to about
8 that form?

9 MS. HENDERSON: The City, in order for the
10 City to take action in terms of agreeing to any
11 negotiation, the city council would be the
12 agency who would have to do that. If you
13 rephrase it as city staff I'll have no
14 objection.

15 Q (BY MS. JONES) Did the city staff and the
16 city attorney discuss negotiated alternate
17 conditions to the parking issue on the property?

18 A Yes.

19 Q I'm going to show you what's previously
20 been marked as Plaintiff's Exhibit No. 7. And I
21 think I gave you this at the last deposition.

22 MS. HENDERSON: I, I kept what you gave me
23 and didn't bring them back so I'll look on,
24 over Nancy's shoulder.

25 MS. JONES: All right.

1 Q (BY MS. JONES) Now, did you receive this
2 memorandum? Or have you seen this memorandum
3 before?

4 A Yes. I signed it.

5 Q That's your, that is your initials?

6 A That is my initials, yes.

7 Q I didn't even notice the initials. And
8 what do you believe this memorandum to involve?

9 A If I could reread it since it's been a
10 while.

11 Q Sure. Take your time.

12 A Yeah. This is the memo to the city
13 manager indicating that the city attorney and I were
14 forwarding a set of alternate possible conditions
15 for this property. And since it was very late in
16 the process of the mayor and council taking this
17 case separate question and deferral, so that it
18 could go back to planning commission for their
19 consideration and counsel.

20 Q Are the alternate conditions contained or
21 attached to the memo?

22 A They are.

23 Q And were these the alternate conditions
24 that the staff and the Church of Scientology crafted
25 in order to address the parking issues on the

1 property?

2 A Yes.

3 Q Now, did the staff accept these alternate
4 conditions as, did the staff accept these alternate
5 conditions as part of its recommendation?

6 A The staff indicated these were alternate
7 conditions that would be acceptable to the staff,
8 but the staff did not change its recommendation.

9 Q Did the staff recommend either the
10 recommended conditions that the planning staff
11 recommended or the alternate conditions --

12 A Yes.

13 Q -- for the approval of the rezoning?

14 A Yes.

15 Q So the staff was satisfied that either the
16 recommended, the planning staff recommended
17 conditions would be acceptable or the alternate
18 conditions would be acceptable?

19 A Yes.

20 Q Now, in Interrogatory No. 14, I'm going to
21 give you this back to look at your interrogatory
22 response.

23 MS. JONES: You know, if you need to take
24 more aspirin, then just holler.

25 THE WITNESS: I think it's --

1 MS. HENDERSON: If we could go about
2 another 15 minutes and maybe take a lunch
3 break --

4 MS. JONES: Lunch break, yeah.

5 MS. HENDERSON: -- and let her rest her
6 head for a while.

7 THE WITNESS: Yeah.

8 MS. HENDERSON: That would be good.

9 MS. JONES: Yeah. I don't want you to be
10 sitting there miserable.

11 THE WITNESS: No. You'll just get the
12 answer that comes out when I have a headache.

13 MS. JONES: Actually I was trying --

14 MS. HENDERSON: I don't want the answer
15 that just comes out when her head hurts.

16 MS. JONES: I was just trying to be nice
17 about that. I don't want the answer that
18 comes out just because your head hurts
19 either.

20 THE WITNESS: I'm sorry. Okay.

21 Q (BY MS. JONES) In your response to
22 Interrogatory No. 14 which asks you to identify
23 your, the question was to identify each harm or
24 detriment to the public health, safety, morals, and
25 welfare that the City contends would result from the

1 use of the property in accordance with the alternate
2 conditions as proposed by the staff.

3 The response was that the City, and I'm
4 looking at the fourth line, third line of the
5 response, the City of Sandy Springs has no effective
6 means of monitoring compliance with a condition that
7 limits occupancy to a level considerably less than
8 the building could comfortably hold.

9 I'm a little bit confused since based
10 on your testimony regarding these alternate
11 conditions you recommend, you could recommend
12 approval of the altered conditions. There seems
13 to be in my mind a contradiction between this
14 response and the response of recommending approval
15 of the alternate conditions. Could you explain
16 that?

17 A Theoretically one can do what is in the
18 alternate conditions. Practically speaking the
19 mayor and city council have indicated that they
20 don't have the resources to be able to do that
21 kind of monitoring. It is extremely difficult to
22 monitor occupancy in any event. Currently I have no
23 weekend code enforcement officers so it would be
24 very difficult if the activity occurred on the
25 weekend to be able to address the issue.

1 In addition, it would be difficult for us
2 to deal with this in the same way that we would deal
3 with, say, a nightclub where we were asking that
4 some of the people leave the room. And this is a, a
5 church. And I'm not sure that that would be
6 something that, that we would feel comfortable
7 monitoring in that form.

8 Q Now, you approved the alternate, you
9 recommended approval. You didn't approve them
10 because you don't have that authority, but you
11 recommended approval of the alternate conditions
12 both with a occupancy cap of 283 persons and also
13 with an occupancy cap of 170 persons; is that
14 correct?

15 A I know the 170. I can't, I, the, the
16 issue about the two, 283 I can't exactly remember
17 those, the timing of those recommendations. So
18 forgive me if I don't remember that. However, I was
19 making my best effort to find a resolution to a
20 difficult case. Because we did not have a problem
21 with the use of the facility as a church, it was
22 certainly my goal to find a, a solution that would
23 be mutually acceptable.

24 The difficulty is that in crafting those
25 conditions there are some implications that became

1 more apparent as we discussed the process. And so
2 although one can do this, I don't have the resources
3 to do it at this time. And that was where we ended
4 up on the case.

5 Q You found it acceptable for the, for
6 the monitoring to be self-reporting; is that
7 correct?

8 A Yes.

9 Q Did you change your mind about that?

10 A No. The self-reporting is not an issue.
11 The difficulty here is if there is a matter of
12 noncompliance and a complaint, how it would be
13 handled.

14 Q So if a neighbor complained --

15 A Someone would have to go into the church,
16 count the people, and if the numbers were over --
17 and it's the total building; it's not just the
18 place of public assembly -- then we would have to
19 find a way to deal with that issue. And I don't
20 believe that that is where the mayor and council
21 want to be.

22 Q A citation could be issued, couldn't
23 it?

24 A I would find it very difficult to issue a
25 citation to a church over an occupancy issue. And I

1 think that it would be very difficult to determine
2 given that the, that this would be a 43,000 square
3 foot building with total occupancy in the total
4 building, it would require going through the total
5 building to determine whether or not that it was
6 overoccupied.

7 Q You certainly would be able to
8 determine whether or not church members were parking
9 on the streets or in the neighborhoods; is that
10 correct?

11 A If the parking, if, if the number of cars
12 exceeded the parking in the lot, that would
13 certainly be an indicator that there might be an
14 issue, but it doesn't deal with the issue of the
15 number who are in the building. The only way to
16 determine the number in the building is to go and,
17 and actually figure out how many are there. And
18 that would require that someone go through the total
19 building.

20 And then to figure out how we would
21 address the, the -- a citation could be issued, but
22 the reality is that if this is a, this kind of
23 issue, then normally one would try to have people
24 leave who go beyond that number. But that's
25 something that would be pretty awkward and pretty

1 difficult, particularly in a church. And I, I don't
2 think that that was where the mayor and council
3 wanted to be.

4 Q Do you know of any instance in which the
5 City found that a church or place of worship was
6 overcapacity --

7 A I'm not aware of any.

8 Q -- at any one time?

9 A I've never heard of it.

10 Q How about the Buckhead Church?

11 A I don't believe that -- by the time we
12 became a city and the issue arose, it pretty much
13 went away shortly afterwards. So I, it never came
14 to us in that form.

15 Q If a neighbor complained, the City would
16 send someone to check; is that correct?

17 A Well, the difficulty is that the Buckhead
18 Church would have been a different situation because
19 the only limitation would be the certificate of
20 occupancy total numbers in the church. If the
21 parking was just insufficient for the number in that
22 church assembly area, I wouldn't have any way of
23 dealing with that other than parking violations and
24 it be a police department issue. And I don't know
25 because I, that was prior to the city, and I'm not,

1 not as familiar with it except for the complaints
2 about the parking.

3 Q Does each church in Sandy Springs have a
4 certificate of occupancy?

5 A Yes. They would have received one at time
6 of completion of their building. It might be old;
7 they might not have a copy of it anymore, but, yes,
8 they would have gotten one when they completed
9 construction.

10 Q And does each certificate of occupancy
11 contain a capacity load?

12 A It would because the fire -- on, on the
13 Sandy Springs certificates of occupancy, it goes
14 actually on the certificate because we have a common
15 CO which is signed by both the fire marshal and the
16 chief building officer. And so it's a single CO,
17 and that is posted.

18 MS. HENDERSON: And when you get through
19 the certificate of occupancy questions, then
20 can we take a break?

21 MS. JONES: We can take a break right now,
22 and then I'm going to come back to certificate
23 of occupancy later anyway.

24 (A lunch recess was taken from 11:53 a.m.
25 to 1:09 p.m.)

1 Q (BY MS. JONES) We were talking about COs
2 when we left off, and I had one more question about
3 COs. What is the point of assigning a capacity load
4 for any establishment if the City cannot enforce it?

5 A The capacity that is normally done is done
6 by the fire department, and the fire department
7 would, would handle the, the enforcement of that
8 provision under the fire code.

9 Q How would they do that?

10 A We would have to ask them. They assign,
11 they do their own calculations, and, and that would
12 be the normal calculation that we would see.

13 Q Who in the fire department would you turn
14 to for that sort of information?

15 A It comes to us from either their inspector
16 or from the fire marshal.

17 Q Who is the inspector?

18 A Well, I'm not sure which one of them
19 actually turns the information in. It could be
20 either Cheryl Walls or David Adams, or it could be
21 the fire marshal, and that would be Jeff
22 Scarborough. But it is Jeff's signature that goes
23 on the CO.

24 Q Let me show you an excerpt from the zoning
25 ordinance, and you can look at your own zoning